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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

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|---------------------------|---|
| Proceeding | 91221951 |
| Party | Defendant Hair Are Us, Inc. |
| Correspondence Address | HARRY TAPIAS LOIGICA PA 2 S BISCAYNE BLVD , STE 3760 MIAMI, FL 33131-1815 UNITED STATES harry.tapias@loigica.com, camilo.espinosa@ @loigica.com, tiffany.disney@loigica.com |
| Submission | Answer |
| Filer's Name | Harry Tapias |
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| Signature | /Harry Tapias/ |
| Date | 06/23/2015 |
| Attachments | response .pdf(146290 bytes) |

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE
THE TRADEMARK TRIAL AND APPEAL BOARD**

Geoffrey, LLC
a Delaware limited liability
company,

Opposer,

OPPOSITION NO. 91221951

Serial No. 86222809

v.

Hair Are Us, Inc.,
a Georgia corporation

Applicant.

APPLICANT'S ANSWER TO NOTICE OF OPPOSITION

Applicant, Hair Are Us, Inc., for its answer to this Notice of Opposition filed by Geoffrey, LLC against application for registration of Hair Are Us, Inc.'s trademark HAIR ARE US, Serial No. 86222809 filed March 17th, 2014, and published in the Official Gazette of Apr 14, 2015, pleads and avers as follows:

1. Answering paragraph 1 of the Notice of Opposition, Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained therein and accordingly denies the allegations.

2. Answering paragraph 2 of the Notice of Opposition, Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained therein and accordingly denies the allegations.

3. Answering paragraph 3 of the Notice of Opposition, Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained therein and accordingly denies the allegations.

4. Answering paragraph 4 of the Notice of Opposition, Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained therein and accordingly denies the allegations.

5. Answering paragraph 5 of the Notice of Opposition, Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained therein and accordingly denies the allegations.

6. Answering paragraph 6 of the Notice of Opposition, Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained therein and accordingly denies the allegations.

7. Answering paragraph 7 of the Notice of Opposition, Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained therein and accordingly denies the allegations.

8. Answering paragraph 8 of the Notice of Opposition, Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained therein and accordingly denies the allegations.

9. Answering paragraph 9 of the Notice of Opposition, Applicant admits

Opposer's mark is registered but denies the remaining allegations contained therein.

10. Answering paragraph 10 of the Notice of Opposition, Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained therein and accordingly denies the allegations.

11. Answering paragraph 11 of the Notice of Opposition, Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained therein and accordingly denies the allegations.

12. Applicant admits the information contained in paragraph 12 of the Notice of Opposition.

13. Applicant admits the information contained in paragraph 13 of the Notice of Opposition.

14. Answering paragraph 14 of the Notice of Opposition, Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained therein and accordingly denies the allegations.

15. Applicant denies the allegation contained in paragraph 15 of the Notice of Opposition.

16. Applicant denies the allegation contained in paragraph 16 of the Notice of Opposition.

17. Applicant denies the allegation contained in paragraph 17 of the Notice of Opposition.

18. Applicant denies the allegation contained in paragraph 18 of the Notice of Opposition.

19. Answering paragraph 19 of the Notice of Opposition, Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained therein and accordingly denies the allegations.

20. Applicant denies the allegation contained in paragraph 20 of the Notice of Opposition.

21. Applicant denies the allegation contained in paragraph 21 of the Notice of Opposition.

22. Answering paragraph 22 of the Notice of Opposition, Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained therein and accordingly denies the allegations.

23. Answering paragraph 23 of the Notice of Opposition, Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained therein and accordingly denies the allegations.

24. Answering paragraph 24 of the Notice of Opposition, Applicant does not have

sufficient knowledge or information to form a belief as to the allegations contained therein and accordingly denies the allegations.

25. Answering paragraph 25 of the Notice of Opposition, Applicant denies that there is “a high degree of similarity between Applicant’s Mark and the TOYS R US Marks”; as to the remaining allegations contained in the paragraph, Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained therein and accordingly denies the allegations.

26. Applicant denies the allegation contained in paragraph 26 of the Notice of Opposition.

**AS AND FOR ITS AFFIRMATIVE DEFENSES HEREIN, DEFENDANT
ALLEGES AS FOLLOWS:**

27. Applicant further affirmatively alleges that there is no likelihood of confusion mistake, or deception, because, *inter alia*, Applicant’s mark and the pleaded marks of Opposer are not confusingly similar. Although they share the usage of the phrase “are us” the marks are not similar in appearance. To an ordinary consumer, the likelihood of confusion would not be present because of how dissimilar the marks are in appearance. TOYS R US marks have a distinctive appearance in regards to the bubble letter font, and the distinguishing character mark of the backwards “R” with a star symbol in the center of the “R”. Neither the distinctive font nor signature “star” symbol imbedded in the reversed “R” are being used by Applicant; in fact, Applicant has distinguished itself further from Opposer’s marks by spelling out “are” completely, unlike using the shortened version of

Opposer, and Applicant is using a completely different font and color scheme. These differences will prevent confusion among consumers as to the origin of the goods. Therefore, there is no likelihood of confusion because the marks differ so substantially in appearance, connotation, and commercial impression.

28. Applicant further affirmatively alleges there is no likelihood of confusion, mistake, or deception, because *inter alia*, the goods and services offered by Applicant are distinct from the goods and services offered by Registrant. Opposer offers hair products in relation to infants and children. Applicant only offers hair extensions that can be used by adults. The goods are so unrelated as to be unlikely to suggest to consumers that they emanate from a common source. There is a distinct difference between baby shampoo for use on an infant or child's hair than selling hair extensions to be placed on a mature female adult wishing to obtain greater sex appeal. While both products deal with hair, the ultimate consumer and end use of the product is so distinct that the products cannot rightly be compared to each other. The age-old saying "it's like comparing apples to oranges" would be applicable to comparing baby shampoo to hair extensions. Opposer may narrowly circumscribe to the goods or services indicated, any other use would not lead to a likelihood of confusion. Therefore, because of the distinct product offering, there is no likelihood of confusion.

29. Applicant further affirmatively alleges there is no likelihood of confusion, mistake, or deception, because *inter alia*, the goods and services offered travel through different channels. Applicant and Registrant are directing their products at different categories of consumers. Registrant's end user of products is children and infants.

Applicant's products are marketed directly towards adults, more specifically female adults who are seeking to beautify and augment their hair. Applicant sells their products in stores in Atlanta, Georgia, and Miami, Florida, offering the sale of hair extensions, hair braiding services, and other beauty services, in addition to online shopping services, all targeted towards young female adults. (See Hairareus.com.) Geoffrey LLC has no such stores offering these services. Therefore, the consumer is highly unlikely to be confused by the co-existence of the marks.

30. Applicant further affirmatively alleges there is no likelihood of confusion, mistake, or deception, because *inter alia*, the goods and services offered are not within the natural expansion realm of Geoffrey, LLC. "[A] trademark owner cannot by the normal expansion of its business extend the use or registration of its mark to *distinctly different* goods or services not comprehended by its previous use . *Planetary Motion, Inc. v. Techsplosion, Inc.*, 261 F.3d 1188, 1201 (11th Cir. 2001) (citing *Carnival Brand Seafood Co. v. Carnival Brands, Inc.*, 187 F.3d 1307, 1310 (11th Cir. 1999)). The "source of sponsorship test," is used to determine whether the product is in the natural expansion. This test utilizes whether the public would perceive the products as coming from the same source. Because Applicant has a different target market, offers different services, and has a visually distinct mark from the Opposer, surely the public would not perceive the products deriving from the same owner.

31. Therefore, Applicant further affirmatively alleges that there is no likelihood of confusion because the goods are unrelated, sold through different marketing channels, create different commercial impressions, and are not within the Opposer's natural realm of

expansion.

32. Applicant further affirmatively alleges that there is no likelihood of confusion because Opposer's mark is or has become a generic phrase for suppliers that is used in a commercial context to signal to the customer the product which a particular company supplies and, therefore, cannot have meaning as a trademark.

33. Applicant further affirmatively alleges that there is no likelihood of dilution by blurring because Opposer's and Applicant's marks are not sufficiently similar; there are, upon information and belief, numerous commercial uses of third party marks with the informative "are us" phrase; neither Applicant nor Applicant's predecessors in interest intended any association with Opposer's marks or any of them; and upon information and belief, an ordinary prospective purchaser's of Applicant's products do not associate Applicant's marks with Opposer's marks because of the distinct product offering and target market. "Similarly, the Trademark Trial & Appeal Board held that the registration of the applicant's ROLL-X mark for medical and dental X-ray tables was unlikely to cause dilution by blurring of the famous ROLEX mark for timepieces inasmuch as the two marks' differences in appearance, connotation, and commercial impression greatly outweighed the similarity in their pronunciation." 1 Pat. L. Fundamentals § 5:99 (2d ed.). Geoffrey, LLC has a very specific target market of young children and their parents, outside of those class of people, the "are us" is used on numerous occasions in the commercial context and TOYS R US Marks should not enjoy exclusivity to a mark - which prevents other from using a phrase to symbolize to the world what those users and companies sale - outside of the very narrow target market Geoffrey, LLC serves. Applicant's mark and Opposer's marks are distinct in

appearance, connotation, and commercial impression for reasons discussed herein, and therefore, should greatly outweigh the mere similarity in pronunciation.

Respectfully submitted,
Hair Are Us, Inc.

Dated: 06/23/2015

By: /Harry Tapias/
Harry Tapias
Loigica & Attorneys

2 S Biscayne Blvd Ste 3760
Miami, Florida 33131

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first-class mail in an envelope on June 23, 2015 addressed to the following:

Trademark Trial and Appeal Board
2900 Crystal Drive
Arlington, VA 22202-3514
United States

/Harry Tapias/
Harry Tapias

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE
TRADEMARK TRIAL AND APPEAL BOARD**

Geoffrey, LLC
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Opposer,

OPPOSITION NO. 91221951

Serial No. 86222809

v.

Hair Are Us, Inc.,
a Georgia corporation

Applicant.

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing Motion For Extension Of Time To Answer Or Otherwise Plead has been served on Geoffrey, LLC by mailing said copy on June 23nd, 2015, via First Class Mail, postage paid to: Megan E. Spitz, Blank Rome LLP, One Logan Square, Philadelphia, Pennsylvania, 19103.

/Harry S. Tapias/
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